

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GM PHOTO, LLC, a New Jersey limited liability company,

Plaintiff,

-against-

FOCUS CAMERA, INC., a New York corporation, MICHAEL SILBERSTEIN, an individual, and CHASSY KIRZNER, an individual,

Defendants,

Case No. 22-CV-10339 (VSB)

**AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff GM Photo LLC ("**GM Photo**"), by its attorneys, submits its Amended Complaint against Defendants Focus Camera, Inc. ("**Focus Camera**"), Michael Silberstein ("**Silberstein**"), and Chassy Kirzner ("**Kirzner**"), as follows:

NATURE OF THE ACTION

1. "Envy wounds with false accusations." - *Leonardo da Vinci*.
2. This action arises out of Defendants' spurious scheme to put GM Photo out of business by making blatantly false counterfeit claims against GM Photo on the Amazon.com, Inc. Seller Marketplace ("**Amazon**").
3. GM Photo sells genuine equipment manufactured by SIGMA Corp. ("**Sigma**") on Amazon. Focus Camera knows this. But, contrary to the truth and in furtherance of an unlawful and illicit anticompetitive agenda, Focus Camera has made a series of false claims that resulted in the suspension of GM Photo's Sigma products on Amazon, threatened the destruction of GM Photo's valuable Sigma inventory, damaged

and impugned GM Photo's previously sterling reputation and standing with Amazon, caused GM Photo lost sales, and has damaged consumer prices and choice.

4. Focus and Silberstein, in concert with Kirzner, have, in fact, threatened in writing to take acts to irreparably harm and put GM Photo out of business on Amazon.

5. GM Photo seeks to hold Defendants accountable for acting to harm GM Photo through maliciously false counterfeit claims.

6. Focus Camera's unlawful acts against GM Photo include tortious interference, commercial defamation, trade libel, violations of New York statutory deceptive acts or trade practices, and common law unfair competition.

7. Focus Camera has lodged similar false claims against other sellers of Sigma products on Amazon.

8. Silberstein, Kirzner and Focus Camera's illegal and anticompetitive acts and continued threat to harm and put GM Photo out of business must be redressed by way of injunctive relief and damages.

PARTIES

9. Plaintiff GM Photo, LLC is a New Jersey limited liability company. Its principal place of business is 1716 East Elizabeth Ave, Linden, New Jersey 07036.

10. Plaintiff's members, for determining the citizenship of the limited liability company, are (1) Morris Harari, a citizen of the state of Florida; and (2) Gabriel Simony, a citizen of the state of New Jersey.

11. Defendant Focus Camera, Inc. is a New York Corporation. Its principal place of business is 895 and 905 McDonald Ave, Brooklyn, New York 11218.

12. Defendant Silberstein is a natural person domiciled, upon information and belief, in the state of New York. Silberstein is the Chief Executive Officer of Focus Camera and personally participated in the commission of the business torts alleged herein.

13. Defendant Kirzner is a natural person domiciled, upon information and belief, in the state of New York. Kirzner is the Director of Amazon Sales for Focus Camera and personally participated in the commission of the business torts alleged herein.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this matter under 28 U.S.C. § 1332(a)(1) because complete diversity of citizenship exists between the parties and the amount in controversy exceeds \$75,000.

15. Venue is proper in the United States District Court for the Southern District of New York under 28 U.S.C. § 1391(b)(2) because GM Photo and Defendants market and sell the subject products in this judicial district, the consumers being harmed by Defendants' false claims reside in this judicial district, and therefore a substantial part of the events or a substantial part of property that is the subject of the action giving rise to GM Photo's claims arose or is situated in this judicial district.

FACTS

A. GM Photo Sells Genuine Sigma Products

16. GM Photo has operated the Digital Village store for over 10 years on Amazon.

17. GM Photo's consumer goods for sale on Amazon include authentic camera lenses manufactured by Sigma, a premium photographic and video graphic technology

manufacturer.

18. At all material times, GM Photo has sold 100% authentic and genuine Sigma products on Amazon.

19. GM Photo's Sigma products for sale through Digital Village are shipped to Amazon buyers in original Sigma packaging and accompanied by factory warranty cards showing the original serial numbers of the products.

20. GM Photo sources its Sigma products from a verified and authorized distributor for resale.

21. Sigma permits GM Photo's distributor to sell Sigma products for resale.

B. Focus Camera Makes False Counterfeit Claims Against GM Photo

22. Focus Camera is a competitor of GM Photo and sells Sigma products on Amazon and in its own retail stores.

23. In October 2022, Kirzner, Focus Camera's Director of Amazon Sales, together with Focus Camera CEO Silberstein and unknown Focus Camera actors, submitted a series of blatantly false counterfeit claims against GM Photo to Amazon.

24. Focus Camera is not the exclusive, gated, or restricted distributor of the subject Sigma products on Amazon. Defendants' false claims were made by use of Amazon's website and brand registry system or "Report Infringement Form". See <https://brandservices.amazon.com/>; <https://amazon.com/report/infringement> (last accessed March 1, 2022).

25. Defendants knowingly submitted false information that certain of GM Photo's Sigma goods for sale are counterfeit (as in that the product are fake goods being

passed as an original or packaging has an unlawful reproduction of a registered trademark) to abuse the Amazon brand registry and infringement reporting system and damage GM Photo and other sellers.

26. By supplying false claims to Amazon, Defendants caused GM Photo and other Sigma products sellers to be suspended from Amazon. Kirzner's false claims misrepresented that GM Photo's Sigma products were counterfeit, as in illegally replicated, or reproduced. Kirzner should have known, and certainly came to know, that GM Photo's Sigma products for sale were genuine.

27. Specifically, on or about October 9 and October 17, under the direction of Silberstein and as a Focus Camera agent, Kirzner maliciously submitted false claims that certain of GM Photo's goods were counterfeit to Amazon.

28. Kirzner perjured herself and Focus Camera by submitting the false and malicious claims under penalties of perjury via Amazon's "Report Infringement" claim form. See <https://amazon.com/report/infringement> (last accessed March 1, 2022).

29. In connection with her false claims, Kirzner, on behalf of Focus Camera and for the pecuniary benefits of it, herself, and Silberstein, declared, among other things, that "under penalty of perjury ... the information contained in this notification is correct and accurate...." It was not.

30. On October 9, 2022, at or around 12:14 AM, following Kirzner's submission of a false counterfeit claim, GM Photo received an email from Amazon email address notice-dispute@amazon.com with the subject line "Notice: Policy Warning" outlining Defendants' misconduct and stating that GM Photo's inventory could be destroyed.

31. Defendants' October 9, 2022, false claim wrongfully asserted that GM Photo's products sold under Amazon Standard Identification Number ("ASIN") B081L5HJBP were counterfeit. That ASIN is associated with a Sigma 24-70mm F2.8 DG DN Art for Sony E Lens that sells for approximately \$900 to \$1,200 per unit on Amazon.

32. An Amazon ASIN is a unique identifier of 10 letters and/or numbers for a product within Amazon's product catalog featuring billions of items.

33. On October 9, 2022, in response to the initial false Amazon notice, GM Photo contacted Kirzner via email and stated that GM Photo's Amazon-listed items are brand new and authentic models purchased through authorized channels.

34. GM Photo further stated that Focus Camera and Kirzner were wrongfully slandering GM Photo's company and damaging GM Photo's Amazon seller account.

35. Defendants did not respond to GM Photo's email. Instead, they escalated their conniving measures and submitted additional false counterfeit claims.

36. On October 17, 2022, at or around 1:27 AM, following Kirzner's submission of additional false counterfeit claims, GM Photo received an email from Amazon email address notice-dispute@amazon.com with the subject line "Notice: Policy Warning" notifying GM Photo of Defendants' scheme wrongfully claiming additional of GM Photo's products sold on Amazon were counterfeit.

37. Defendants had doubled-down on their false, defamatory, malicious, and illegally anticompetitive claims by wrongfully stating that GM Photo's goods sold under ASIN B00THOYRN6 were counterfeit. That ASIN is associated with a Sigma 150-600mm 5-6.3 Contemporary DG OS HSM Lens for Canon that sells for approximately \$850 to

\$1,100 per unit on Amazon.

38. Defendants knew, or should have known, before their second false counterfeit claim of October 17, 2022, that GM Photo's Sigma products are genuine.

39. Again on October 17, 2022, and at or around 2:27 AM, GM Photo received a third email from Amazon email address notice-dispute@amazon.com with the subject line "Notice: Policy Warning".

40. Defendants had tripled-down on their malicious and false counterfeit claims by wrongfully claiming that GM Photo's goods sold under ASIN B00DBL0NLQ were counterfeit. That ASIN is associated with a Sigma 18-35mm F1.8 Art DC HSM Lens for Canon, Black (21010-1) that sells for approximately \$600 to \$800 per unit on Amazon,

41. Defendants knew, or should have known, before their third bogus counterfeit claim on October 17, 2022, that GM Photo's products are genuine and authentic, including by GM Photo's written notice on October 9, 2022.

42. With each swing of their false claim bat, Defendants made repeat contact and libeled GM Photo's good name and ongoing prospective economic advantages or contractual relationships with Amazon and Amazon buyers.

43. GM Photo's inventory that was associated with the suspended listings was worth approximately \$1.5 million at the time of the suspension.

44. GM Photo is informed that Defendants have made the same false and libelous claims against other sellers on Amazon during the 2022 holiday buying season because there are "too many sellers" of Sigma products on Amazon.

45. Focus Camera, Silberstein, and Kirzner carried out their unlawful and

anticipative scheme to eliminate or reduce competitive sales on Amazon.

46. Defendants' wrongful acts are in knowing and flagrant disregard of Amazon's Seller Code of Conduct and policies for trademark infringement and counterfeiting, including Amazon's *Intellectual Property for Rights Owners* policy.

47. Defendants' false claims against GM Photo and other Amazon sellers are damaging consumer choice and price competition by causing seller suspensions or seller account closures based upon false counterfeit claims.

48. Defendants knew that GM Photo's products are genuine and authentic because high-end photographic equipment, including the subject digital single-lens reflex camera ("DSLR") or single-lens reflect camera ("SLR") lenses, include elaborate parts and electric circuits and are nearly impossible to counterfeit.

49. Consumers of high-end photographic equipment are sophisticated consumers and generally able to identify counterfeit products. Counterfeit photographic equipment does not satisfy a trusted manufacturer's standards for glass, component, electronic, safety, or image quality.

50. Defendants also knew, or should have known, before the initial October 9, 2022, bogus counterfeit claim that GM Photo's products are genuine because of their experience selling products on Amazon in direct competition with GM Photo.

51. In connection with their false counterfeit claims against GM Photo, Focus Camera, Silberstein and Kirzner acted in reckless or willful disregard of the truth by stating that genuine Sigma products were counterfeit.

52. In connection with their false counterfeit claims against GM Photo, Focus

Camera, Silberstein and Kirzner acted with hatred, spite, or ill will towards GM Photo.

53. Upon information and belief, Defendants are routine abusers of Amazon's intellectual property and brand registry complaint system and have made false counterfeit claims against other Amazon sellers – thereby falsely maligning GM Photo's trade, business, or reputation alongside other false counterfeit claim targets.

54. No factual support existed for Defendants' false claims because they intentionally and willfully stated that GM Photo's products are counterfeit (as in that the product are fake goods being passed as an original or packaging has an unlawful reproduction of a registered trademark).

55. Amazon's anticounterfeiting policy prohibits "[t]he sale of counterfeit or inauthentic products (including products that have been illegally replicated, reproduced, or manufactured)."

56. When submitting the counterfeit claims to Amazon, Defendants were aware that GM Photo was not selling counterfeit products under the plain and unambiguous meaning of the word or under Amazon's anti-counterfeit policy.

57. Kirzner's false claims were done for her own pecuniary benefits, for Silberstein's pecuniary benefits, and for Focus Camera's pecuniary benefits. By causing GM Photo's listings to be suspended, Defendants reduced price competition on Amazon and reduced consumer choice with the goal of selling their own Sigma products.

C. Focus Camera Threatens Shut GM Photo's Amazon Business Down

58. On October 11, 2022, GM Photo, through its counsel, sent a letter to Defendants Focus Camera and Silberstein requesting immediate withdrawal of the false

claims. In response, on October 24, 2022, Focus Camera CEO Michael Silberstein conceded that the spurious counterfeit claims made to Amazon were false.

59. But in furtherance of Defendants' acts to remove GM Photo and other competitors from Amazon, Silberstein threatened to act to "shut down the entire ... GM Photo account down completely."

60. Silberstein associated GM Photo with another third-party seller on Amazon named Trading Deals which, upon information and belief, is among other Amazon sellers that Defendants have interfered upon through false counterfeit claims.

61. Silberstein's cynical and condescending response to GM Photo's demand letter was solely focused on red-herring warranty issues and glaringly conceded Defendants' lack of merit at all times for the bogus counterfeit claims by omission.

62. The material content of Silberstein's unabashed threat and warning is as follows:

This email is in response to complaint ID: 10941177051. Attached you will find a letter, as I explained to you on the phone, that your client is misrepresenting products being sold and therefore causing customers to buy products with the wrong description and no warranty. This is called capturing sales that are misleading innocent bystanders.

What's even worse – the customer buys a product and will only find out months later that he got scammed, as the product has no warranty.

I'm not sure if you've ever dealt with Amazon in the past, but if I send this letter up to Amazon's headquarters, it might shut the entire Trading Deals/GM Photo account down completely. For now, it was just the ASIN.

63. Contrary to Silberstein's spurious position, GM Photo complies with Amazon policies in connection with its sale of Sigma products. Amazon has disclosed to

buyers that manufacturer warranties may not apply in all cases as follows:

If you'd like a copy of the manufacturer's warranty for a product found on Amazon.com, you can contact the manufacturer directly or visit their website for more information. **Manufacturer's warranties may not apply in all cases, depending on factors like the use of the product, where the product was purchased, or who you purchased the product from.** Please review the warranty carefully, and contact the manufacturer if you have any questions.

In addition, Amazon directs purchases to contact the seller directly for warranty information or to the manufacturer's website.

64. Silberstein's written threat to act to shut down GM Photo's ability to conduct business on Amazon risks irreparable harm to GM Photo. If GM Photo were prohibited from selling *any* product on Amazon (as threatened by Defendant Silberstein), it would be catastrophic to its business.

65. As a longtime seller on Amazon, GM Photo's Digital Village account enjoys certain special, grandfathered account benefits, including featured account, "Buy Box" benefits, and daily payouts that are at risk due to Defendants' false counterfeit claims. The Digital Village account benefits are "grandfathered" such that they are not generally available to new Amazon marketplace sellers.

66. GM Photo's Digital Village account has a long track record of overwhelmingly positive sales comments that make it a trusted seller by Amazon buyers.

67. As admitted by Silberstein, Defendants' false counterfeit claims against GM Photo violate Amazon's Minimum Advertised Price ("MAP") policy:

Minimum Advertised Price (MAP) Agreements: Amazon respects a manufacturer's right to enter into exclusive distribution agreements for its products. *However, violations of such agreements do not constitute*

intellectual property rights infringement. As the enforcement of these agreements is a matter between the manufacturer and resellers, Amazon does not assist in this type of enforcement activity.

68. Consumers benefit from price competition on Amazon by paying prices that are often much lower than MAP Agreements. With those savings, consumers may purchase a third-party warranty at a price that is effectively less than paying the full MAP.

69. Indeed, before Defendants' false counterfeit claims, GM Photo had never received a consumer complaint of counterfeiting.

70. As an experienced and longtime seller on Amazon, the submission of false counterfeit claims against GM Photo has sullied its reputation with Amazon, subjects it to more scrutiny based on false and defamatory acts, and could result in further suspension (temporary or permanent) of GM Photo's account as a whole, or partial suspension of other seller privileges and rights enjoyed and earned by GM Photo on the Amazon Seller Marketplace.

71. By their wrongful acts and unreasonable business torts and restraints of trade, Defendants acted to prevent other Amazon Sellers that are their direct competitors—including but potentially not limited to GM Photo and Trading Deals—from conducting business as they normally would but for Defendants' false counterfeiting claims and interference with their competitor businesses.

72. Defendants' wrongful acts have resulted in harm to GM Photo, harm to competition in general, and harmed consumers. By reducing competition from competitors that are willing to sell products at lower prices, Defendants have benefitted

from restraining competition in the Amazon marketplace through false counterfeit claims.

73. All conditions precedent to this action have been satisfied, waived, met, or rendered futile.

**First Cause of Action
(Tortious Interference With GM Photo's Prospective Economic Advantage or
Business Relationships)**

74. GM Photo re-alleges paragraphs 1 through 73 above as if set forth in full.

75. Defendants have actual knowledge of GM Photo's prospective economic advantage or advantageous business relations with Amazon, upon which Defendants have willfully and intentionally interfered.

76. Defendants have actual knowledge of GM Photo's cultivated and established advantageous business relationship with Amazon buyers, upon which Defendants have willfully and intentionally interfered.

77. Defendants have willfully, intentionally, and unjustly interfered with or otherwise disrupted GM Photo's business relations with Amazon itself and Amazon buyers by submitting a series of false counterfeit claims.

78. Defendants have acted for a wrongful purpose or used dishonest, unfair, or improper means by submitting a series of false counterfeit claims against GM Photo.

79. Focus, Focus CEO Silberstein, and Focus Director of Amazon Sales Kirzner each participated in the commission of tortious interference with GM Photo's prospective economic or business advantages.

80. Defendant has threatened to escalate its interference with GM Photo's

business relationship with Amazon to “*shut down the entire ... GM Photo account down completely.*”

81. Because of the allegations raised herein of Defendants’ wrongful and illegal acts, Defendants’ acts of tortious interference with GM Photo’s business relationships with Amazon or Amazon buyers cannot be justified because of lawful competition of otherwise.

82. Defendants’ acts have injured GM Photo’s business relationship with Amazon or Amazon buyers.

83. As a direct result of Defendants’ willful, intentional, and unjustified interference with and/or disruption of GM Photo’s business relationships with Amazon, GM Photo has suffered actual and substantial direct and consequential damages, including but not limited to lost revenues, sales, customers, or profits; lost opportunity costs; loss of goodwill; or brand and reputational damage.

84. As a direct and proximate result of Defendants’ tortious interference, GM Photo has suffered injury and damage in an amount to be determined at trial.

85. GM Photo has suffered special damages associated with its reputation and standing on the Amazon marketplace and as a seller subject to Amazon’s oversight and review. GM Photo is at risk of losing its valuable Amazon seller account due to Defendants’ false and malicious counterfeit claims and continued threats. GM Photo is at risk of losing valuable inventory due to Defendants’ false and malicious counterfeit claims and threats to put GM Photo out of business. GM Photo’s goodwill and commercial reputation has been injured due to Defendants’ false counterfeit claims.

86. GM Photo will seek punitive and exemplary damages for Defendants' acts of tortious interference.

**Second Cause of Action
(Tortious Interference With GM Photo's Contractual Relationship with Amazon)**

87. GM Photo re-alleges paragraphs 1 through 73 above as if set forth in full.

88. Defendants have actual knowledge of GM Photo's contractual relationship with Amazon, upon which GM Photo has willfully and intentionally interfered.

89. Specifically, Section 6.2 of GM Photo's contract with Amazon, the *Amazon Services Business Solutions Agreement* in effect at times material to this dispute, states: "Amazon will defend, indemnify, and hold harmless you and your officers, directors, employees, and agents against any third-party Claim arising from or related to ... (b) allegations that the operation of an Amazon Site infringes or misappropriates that third party's intellectual property rights."

90. A "Claim", as defined in the *Amazon Services Business Solutions Agreement* means "any third-party claim, loss, damage, settlement, cost, expense, or other liability (including, without limitation, attorneys' fees) (each, a 'Claim')"

91. Defendants have willfully, intentionally, and unjustly interfered with or otherwise disrupted GM Photo's contractual relationship with Amazon by submitting a series of false counterfeit claims.

92. Defendants' acts are within the definition of a Claim under the *Amazon Services Business Solutions Agreement*.

93. Defendants' brazen interference with GM Photo's agreement with Amazon

resulted in breaches by Amazon of the *Amazon Services Business Solutions Agreement*, the Amazon Seller Code of Conduct, and associated Amazon policies in favor of GM Photo and legitimate competition.

94. Defendants have acted for a wrongful purpose or used dishonest, unfair, or improper means by submitting a series of false counterfeit claims against GM Photo to interfere with its contractual relationship with Amazon.

95. Focus, Focus CEO Silberstein, and Focus Director of Amazon Sales Kirzner each participated in the commission of tortious interference with GM Photo's contractual relationship with Amazon.

96. Defendant has threatened to escalate its interference with GM Photo's contractual relationship with Amazon to "*shut down the entire ... GM Photo account down completely.*"

97. Because of the allegations raised herein of Defendants' wrongful and illegal acts, Defendants' acts of tortious interference with GM Photo's contractual relationship with Amazon cannot be justified because of competition of otherwise.

98. Defendants' acts have injured GM Photo's contractual relationship with Amazon.

99. As a direct result of Defendants' willful, intentional, and unjustified interference with and/or disruption of GM Photo's business relationships with Amazon, GM Photo has suffered actual and substantial direct and consequential damages, including but not limited to lost current and prospective economic advantage, lost revenues, sales, customers, or profits; lost opportunity costs; loss of goodwill; or brand

and reputational damage.

100. As a direct and proximate result of Defendants' tortious interference, GM Photo has suffered injury and damage in an amount to be determined at trial.

101. GM Photo has suffered special damages associated with its reputation and standing on the Amazon marketplace and as a seller subject to Amazon's oversight and review. GM Photo is at risk of losing its valuable Amazon seller account due to Defendants' false and malicious counterfeit claims and continued threats. GM Photo is at risk of losing valuable inventory due to Defendants' false and malicious counterfeit claims and threats to put GM Photo out of business. GM Photo's goodwill and commercial reputation has been injured due to Defendants' false counterfeit claims.

102. GM Photo will seek punitive and exemplary damages for Defendants' acts of tortious interference.

**Third Cause of Action
(Commercial Defamation)**

103. GM Photo re-alleges paragraphs 1 through 73 above as if set forth in full.

104. Defendants have knowingly and maliciously made false statements of and concerning the GM Photo, specifically that GM Photo sells counterfeit goods when, in fact, GM Photo's goods are genuine products.

105. Specifically, on or about October 8, 9, 16 or 17, 2022, Defendants made written defamatory factual statements concerning GM Photo and GM Photo's goods for sale in the false counterfeit claims submitted to Amazon.

106. Defendants published the false counterfeit claims to Amazon.

107. Defendants acted with actual malice in publishing the false counterfeit claims to Amazon because they knew that the false counterfeit claims were false and defamatory statements at the time they made them.

108. Defendants' statements are defamatory *per se* because they maliciously impugn GM Photo's business reputation and practices in its trade or profession.

109. Defendants' denigrating of the quality of GM Photo's goods or services were malicious and done to eliminate GM Photo's lawful competition with Defendant.

110. Defendants admitted on October 24, 2022, that GM Photo's goods are not counterfeit in response to GM Photo's demand that the false claims be withdrawn. In response to GM Photo's demand, Defendant Silberstein raised a red-herring manufacturer warranty coverage issue for goods sold by GM Photo on Amazon.

111. As a direct result of Defendants' willful, intentional, and false acts of commercial defamation, GM Photo has suffered actual and substantial direct and consequential damages, including but not limited to lost revenues, sales, customers, and profits; lost opportunity costs; loss of goodwill; and brand and reputational damage.

112. As a direct and proximate result of Defendants' commercial defamation, GM Photo has suffered injury and damage in an amount to be determined at trial.

113. GM Photo has suffered special damages associated with its reputation and standing on the Amazon marketplace and as a seller subject to Amazon's oversight and review. GM Photo is at risk of losing its valuable Amazon seller account due to Defendants' false and malicious counterfeit claims and continued threats. GM Photo is at risk of losing valuable inventory due to Defendants' false and malicious counterfeit

claims and threats to put GM Photo out of business. GM Photo's goodwill and commercial reputation has been injured due to Defendants' false counterfeit claims.

114. GM Photo will seek punitive and exemplary damages for Defendants' acts of commercial defamation.

**Fourth Cause of Action
(Trade Libel)**

115. GM Photo re-alleges paragraphs 1 through 73 above as if set forth in full.

116. Defendants have knowingly and maliciously made false statements about GM Photo's business of a kind calculated to prevent others from dealing with GM Photo.

117. These statements are libelous because they maliciously impugn GM Photo's business reputation and practices in its trade or profession.

118. As a direct result of Defendants' willful, intentional, and unjustified interference with and/or disruption of GM Photo's business relationships with Amazon, GM Photo has suffered actual and substantial direct and consequential damages, including but not limited to lost revenues, sales, customers, and profits; lost opportunity costs; loss of goodwill; and brand and reputational damage.

119. As a direct and proximate result of Defendants' trade libel, GM Photo suffered (and continues to suffer) injury and damage in an amount to be determined at trial.

120. GM Photo has suffered special damages associated with its reputation and standing on the Amazon marketplace and as a seller subject to Amazon's oversight and review. GM Photo is at risk of losing its valuable Amazon seller account due to

Defendants' false and malicious counterfeit claims and continued threats. GM Photo is at risk of losing valuable inventory due to Defendants' false and malicious counterfeit claims and threats to put GM Photo out of business. GM Photo's goodwill and commercial reputation has been injured due to Defendants' false counterfeit claims.

121. GM Photo will seek punitive and exemplary damages for Defendants' acts of trade libel.

Fifth Cause of Action
(Deceptive Acts or Trade Practices in Violation of N.Y. General Business Law § 349)

122. GM Photo re-alleges paragraphs 1 through 73 above as if set forth in full.

123. New York General Business Law § 349 ("GBL § 349") states:

(a) Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.

...

(h) In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions.

124. Defendants' acts or practices have a broad impact on consumers at large and are anticompetitive. By filing false counterfeit claims with Amazon, Defendants have reduced price competition and the supply of goods in the marketplace on Amazon and in general. The reduction in price competition caused by Defendants' false counterfeit claims has a negative effect on consumer choice and supply and demand.

125. Defendants' false counterfeit claims is deceptive in a material way because it has resulted in GM Photo's suspension from Amazon and threatened additional

negative consequences and irreparable harm against GM Photo's sales and ability to list items for sale on the Amazon marketplace.

126. As a direct and proximate result of Defendants' deceptive acts or trade practices in violation of GBL § 349, GM Photo has suffered actual and substantial direct and consequential damages, including but not limited to lost revenues, sales, customers, and profits; lost opportunity costs; loss of goodwill; and brand and reputational damage.

127. GM Photo has suffered special damages associated with its reputation and standing on the Amazon marketplace and as a seller subject to Amazon's oversight and review. GM Photo is at risk of losing its valuable Amazon seller account due to Defendants' false and malicious counterfeit claims and continued threats. GM Photo is at risk of losing valuable inventory due to Defendants' false and malicious counterfeit claims and threats to put GM Photo out of business.

128. GM Photo will seek punitive and exemplary damages for Defendants' deceptive acts or trade practices in violation of GBL § 349.

**Sixth Cause of Action
(Common Law Unfair Competition)**

129. GM Photo re-alleges paragraphs 1 through 73 above as if set forth in full.

130. Through the acts of interference and false claim sabotage detailed throughout this Complaint, Defendants Focus Camera, Silberstein, and Kirzner have engaged in business conduct which is contrary to honest practice in industrial or commercial matters.

131. GM Photo and Defendants are competitors in the marketing and sale of goods for sale on Amazon.

132. By their unlawful acts, Defendants acted to unfairly curb or restrain trade and competition by causing the suspension of sellers engaged in lawful competition with them on the Amazon Seller Marketplace, including but not limited to GM Photo.

133. As a direct result of Defendants' willful, intentional, and unjustified unfair competition with and/or disruption of GM Photo's business relationships with Amazon, GM Photo has suffered actual and substantial direct and consequential damages, including but not limited to lost revenues, sales, customers, and profits; lost opportunity costs; loss of goodwill; and brand and reputational damage.

134. GM Photo has suffered special damages associated with its reputation and standing on the Amazon marketplace and as a seller subject to Amazon's oversight and review. GM Photo is at risk of losing its valuable Amazon seller account due to Defendants' false and malicious counterfeit claims and continued threats. GM Photo is at risk of losing valuable inventory due to Defendants' false and malicious counterfeit claims and threats to put GM Photo out of business.

135. GM Photo will seek punitive and exemplary damages for Defendants' acts of unfair competition.

Prayer for Relief

WHEREFORE, Plaintiff GM Photo, LLC prays that the Court find against Defendants Focus Camera, Michael Silberstein, and Chassy Kirzner on all causes of action herein and demands judgment as follows:

- (a) As to Cause of Action One an award of damages for compensatory, actual, special, punitive, and exemplary damages;
- (b) As to Cause of Action Two an award of damages for compensatory, actual, special, punitive, and exemplary damages;
- (c) As to Cause of Action Three an award of damages for compensatory, actual, special, punitive, and exemplary damages;
- (d) As to Cause of Action Four an award of damages for compensatory, actual, special, punitive, and exemplary damages;
- (e) As to Cause of Action Five an award of damages for compensatory, actual, special, punitive, and exemplary damages and attorneys' fees under New York General Business Law;
- (f) As to Cause of Action Six an award of damages for compensatory, actual, special, punitive, and exemplary damages;
- (g) Statutory pre-judgment interest; and
- (h) All other relief that the Court deems just and proper.

Dated: March 2, 2023

Respectfully submitted,

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Attorneys for Plaintiff GM Photo, LLC

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he caused a true and correct copy of the foregoing Amended Complaint to be served on the 2nd day of March 2023, via the Court's electronic filing system upon all counsel of record.

By: /s/ Alejandro M. Miyar
Alejandro M. Miyar